IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.25 OF 1999

IN

ARBITRATION PETITION 292 OF 1998

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Union of India ...Appellant
(Orig.Petitioner)

v/s.

M/s.Ram Hukum Tex. Pvt.Ltd.
Bombay ...Respondent
(Orig.Respondent)

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Mr.A.C.Singh with Ms.Bharati Mahant i/b K.B.Rao for the Appellant.

Mr.Shiv Khorana with Mr.Vivek Dharma i/b Ms.Madhuri Raibagkar & Ms.Rubina S. Kazi for the Respondents.

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CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 25TH JULY, 2007

P.C.:

1. By this Appeal, the Appellant/Union of India challenges the order passed by the learned single Judge of this court dated 21st September, 1998 in Arbitration Petition No.292 of 1998. In that petition the Appellant had challenged the award passed by the sole arbitrator dated 13th March, 1998. By that award basically the claim made by the Union of India was rejected. The first challenge to the award before the learned single Judge was that though there is a statutory duty cast on the arbitrator to disclose reasons for the award, the award does not disclose any reasons. The learned single Judge has rejected that contention by observing that though elaborate reasons have not been given, it is possible to find the reasons on the basis of which claims have been awarded.

2. We have heard the learned counsel for both sides. We find, on the perusal of the award, that first the learned arbitrator in the award deals with the claim made by the Union of India. Then, he deals with the counter statement of the Respondent. Then, in the third part he states "Besides above, the Respondents have given other grounds for rejecting the claim of the claimant and for allowing their claims as under", and then he gives grounds given by the Respondents for allowing their claims. Then, final part of the award is the award actually made by the learned arbitrator.

3. The submission of the learned Counsel appearing for the Respondents is that what is stated by the learned arbitrator in the award below above quoted observations are actually the reasons given by the learned arbitrator. If one peruses the award from that point of view, it shows that the learned arbitrator is summarising the reasons given by the Respondent for allowing the claims made by the Respondents and for rejecting the claim made by the Union of India. The case of the claimant has not been considered anywhere. It was also submitted that the learned single Judge has found that reasons have

been disclosed in the award. But perusal of the order of the learned single Judge shows that the learned single Judge has dealt with this aspect of the matter by making following observations-

> "In so far as the first contention is concerned from the award the reasons for allowing or rejecting are disclosed. It may be true that there is no elaborate reasoning. However, from the reasoning given it is possible to find out the basis for awarding of the claim in the light of that the first contention that no reasons are disenable from the award is rejected."

4. Perusal of the provisions sub-section 3 of Section 31 shows that there is a statutory duty cast on arbitrator to state the reasons upon which his award is based. The arbitrator is absolved from his responsibility to disclose reasons which form the basis of the award only in two contingencies, (i) when the parties agreed that no reasons are to be given and (ii) when the award is the arbitral award on the agreed terms under Section 30. Admittedly, in this case both the contingencies do not exist. The

grievance of the Appellant before the learned single Judge was that the learned arbitrator does not disclose reason why the claim made by the Union of India is rejected as also the reason why the claim made by the Respondents has been granted. Perusal of the above quoted observations of the learned single Judge shows that according to the learned single Judge from the award the basis for awarding the claim can be found. The learned single Judge does not say that from the award the reason why the claim made by the Union of India can not be granted can be found. Therefore, even according to the order of the learned single Judge there are no reasons given in the award for rejecting the claim made by the Union of India. When we independently examined the award we found that the learned arbitrator has not discharged his statutory duty of clearly assigning reasons which will disclose the basis of the award. The duty of the arbitrator is to disclose clearly the reasons. It is not for the court to make an inquiry to find out what are the reasons. The reasons to be disclosed by the arbitrator should be apparent on the face of the award itself.

5. In these circumstances, therefore, in our

opinion, the Appeal deserves to be allowed. It is accordingly allowed. The award made by the sole arbitrator and the order passed by the learned single Judge impugned in the Appeal are set aside.

6. The learned Counsel appearing for the Appellant-Union of India, which is the authority empowered by the Arbitration Clause to appoint the arbitrator, has stated that as the arbitrator who has made the award is not available, Smt.Anil Katiyar, C/o DGS & D, 5, Jeevan Tara Bldg. Sansad Marg, New Delhi-110 001 is appointed as the arbitrator. Disputes between the parties are, therefore, referred to her.

Statement is accepted.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)

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